

Subsec. (n)(3). Pub. L. 105-244, § 492(d)(6)(A), (B), substituted “criteria” for “standards” in two places, “recognition process” for “approval process”, and “recognition or denial of recognition” for “approval or disapproval”, and inserted at end “When the Secretary decides to recognize an accrediting agency or association, the Secretary shall determine the agency or association’s scope of recognition. If the agency or association reviews institutions offering distance education courses or programs and the Secretary determines that the agency or association meets the requirements of this section, then the agency shall be recognized and the scope of recognition shall include accreditation of institutions offering distance education courses or programs.”

Subsec. (n)(4). Pub. L. 105-244, § 492(d)(6)(C), added par. (4) and struck out former par. (4) which read as follows: “The Secretary shall maintain sufficient documentation to support the conclusions reached in the approval process, and, upon disapproval of any accreditation agency or association, shall make publicly available the reason for such disapproval, including reference to the specific standards under this section which have not been fulfilled.”

1993—Subsec. (a)(2)(A)(i). Pub. L. 103-208, § 2(i)(3), inserted “of institutions of higher education” after “membership”.

Subsec. (a)(3)(A). Pub. L. 103-208, § 2(i)(4), substituted “subparagraph (A)(i)” for “subparagraph (A)”.

Subsec. (a)(5). Pub. L. 103-208, § 2(i)(5), substituted a semicolon for the period at end of subpar. (L) and inserted after subpar. (L) the following: “except that subparagraphs (G), (H), (I), (J), and (L) shall not apply to agencies or associations described in paragraph (2)(A)(ii) of this subsection;”.

Subsec. (c). Pub. L. 103-208, § 2(i)(6), substituted “as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this subchapter and part C of subchapter I of chapter 34 of title 42” for “for the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42”.

Subsec. (l)(2). Pub. L. 103-208, § 2(i)(7), substituted “institution” for “institution” and “association, described in paragraph (2)(A)(i), (2)(B), or (2)(C) of subsection (a) of this section, leading to the suspension” for “association leading to the suspension”.

Subsec. (n)(1)(B). Pub. L. 103-208, § 2(i)(8), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “site visits at both the accrediting agency or association and member institutions, including unannounced visits where appropriate.”

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

#### STUDY OF TRANSFER OF CREDITS

Pub. L. 105-244, title VIII, § 804, Oct. 7, 1998, 112 Stat. 1806, which directed the Secretary of Education to con-

duct a study regarding the treatment of the transfer of credits from one institution of higher education to another and to report to Congress, not later than one year after Oct. 7, 1998, was repealed by Pub. L. 110-315, title IX, § 931(1), Aug. 14, 2008, 122 Stat. 3456.

#### SUBPART 3—ELIGIBILITY AND CERTIFICATION PROCEDURES

### § 1099c. Eligibility and certification procedures

#### (a) General requirement

For purposes of qualifying institutions of higher education for participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall determine the legal authority to operate within a State, the accreditation status, and the administrative capability and financial responsibility of an institution of higher education in accordance with the requirements of this section.

#### (b) Single application form

The Secretary shall prepare and prescribe a single application form which—

(1) requires sufficient information and documentation to determine that the requirements of eligibility, accreditation, financial responsibility, and administrative capability of the institution of higher education are met;

(2) requires a specific description of the relationship between a main campus of an institution of higher education and all of its branches, including a description of the student aid processing that is performed by the main campus and that which is performed at its branches;

(3) requires—

(A) a description of the third party servicers of an institution of higher education; and

(B) the institution to maintain a copy of any contract with a financial aid service provider or loan servicer, and provide a copy of any such contract to the Secretary upon request;

(4) requires such other information as the Secretary determines will ensure compliance with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42 with respect to eligibility, accreditation, administrative capability and financial responsibility; and

(5) provides, at the option of the institution, for participation in one or more of the programs under part B or C of this subchapter.

#### (c) Financial responsibility standards

(1) The Secretary shall determine whether an institution has the financial responsibility required by this subchapter and part C of subchapter I of chapter 34 of title 42 on the basis of whether the institution is able—

(A) to provide the services described in its official publications and statements;

(B) to provide the administrative resources necessary to comply with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42; and

(C) to meet all of its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Sec-

retary for liabilities and debts incurred in programs administered by the Secretary.

(2) Notwithstanding paragraph (1), if an institution fails to meet criteria prescribed by the Secretary regarding ratios that demonstrate financial responsibility, then the institution shall provide the Secretary with satisfactory evidence of its financial responsibility in accordance with paragraph (3). Such criteria shall take into account any differences in generally accepted accounting principles, and the financial statements required thereunder, that are applicable to for-profit, public, and nonprofit institutions. The Secretary shall take into account an institution's total financial circumstances in making a determination of its ability to meet the standards herein required.

(3) The Secretary shall determine an institution to be financially responsible, notwithstanding the institution's failure to meet the criteria under paragraphs (1) and (2), if—

(A) such institution submits to the Secretary third-party financial guarantees that the Secretary determines are reasonable, such as performance bonds or letters of credit payable to the Secretary, which third-party financial guarantees shall equal not less than one-half of the annual potential liabilities of such institution to the Secretary for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, including loan obligations discharged pursuant to section 1087 of this title, and to students for refunds of institutional charges, including funds under this subchapter and part C of subchapter I of chapter 34 of title 42;

(B) such institution has its liabilities backed by the full faith and credit of a State, or its equivalent;

(C) such institution establishes to the satisfaction of the Secretary, with the support of a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards, that the institution has sufficient resources to ensure against the precipitous closure of the institution, including the ability to meet all of its financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary); or

(D) such institution has met standards of financial responsibility, prescribed by the Secretary by regulation, that indicate a level of financial strength not less than those required in paragraph (2).

(4) If an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree fails to meet the criteria imposed by the Secretary pursuant to paragraph (2), the Secretary shall waive that particular requirement for that institution if the institution demonstrates to the satisfaction of the Secretary that—

(A) there is no reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(B) it is current in its payment of all current liabilities, including student refunds, repay-

ments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(C) it has substantial equity in school-occupied facilities, the acquisition of which was the direct cause of its failure to meet the criteria.

(5) The determination as to whether an institution has met the standards of financial responsibility provided for in paragraphs (2) and (3)(C) shall be based on an audited and certified financial statement of the institution. Such audit shall be conducted by a qualified independent organization or person in accordance with standards established by the American Institute of Certified Public Accountants. Such statement shall be submitted to the Secretary at the time such institution is considered for certification or recertification under this section. If the institution is permitted to be certified (provisionally or otherwise) and such audit does not establish compliance with paragraph (2), the Secretary may require that additional audits be submitted.

(6)(A) The Secretary shall establish requirements for the maintenance by an institution of higher education of sufficient cash reserves to ensure repayment of any required refunds.

(B) The Secretary shall provide for a process under which the Secretary shall exempt an institution of higher education from the requirements described in subparagraph (A) if the Secretary determines that the institution—

(i) is located in a State that has a tuition recovery fund that ensures that the institution meets the requirements of subparagraph (A);

(ii) contributes to the fund; and

(iii) otherwise has legal authority to operate within the State.

#### **(d) Administrative capacity standard**

The Secretary is authorized—

(1) to establish procedures and requirements relating to the administrative capacities of institutions of higher education, including—

(A) consideration of past performance of institutions or persons in control of such institutions with respect to student aid programs; and

(B) maintenance of records; and

(2) to establish such other reasonable procedures as the Secretary determines will contribute to ensuring that the institution of higher education will comply with administrative capability required by this subchapter and part C of subchapter I of chapter 34 of title 42.

#### **(e) Financial guarantees from owners**

(1) Notwithstanding any other provision of law, the Secretary may, to the extent necessary to protect the financial interest of the United States, require—

(A) financial guarantees from an institution participating, or seeking to participate, in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, or from one or more individuals who the Secretary determines, in accordance with paragraph (2), exercise substantial control over such institution, or both, in an amount determined by the Secretary to be sufficient to satisfy the insti-

tution's potential liability to the Federal Government, student assistance recipients, and other program participants for funds under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(B) the assumption of personal liability, by one or more individuals who exercise substantial control over such institution, as determined by the Secretary in accordance with paragraph (2), for financial losses to the Federal Government, student assistance recipients, and other program participants for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, and civil and criminal monetary penalties authorized under this subchapter and part C of subchapter I of chapter 34 of title 42.

(2)(A) The Secretary may determine that an individual exercises substantial control over one or more institutions participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 if the Secretary determines that—

(i) the individual directly or indirectly controls a substantial ownership interest in the institution;

(ii) the individual, either alone or together with other individuals, represents, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who have, individually or in combination with the other persons represented or the individual representing them, a substantial ownership interest in the institution; or

(iii) the individual is a member of the board of directors, the chief executive officer, or other executive officer of the institution or of an entity that holds a substantial ownership interest in the institution.

(B) The Secretary may determine that an entity exercises substantial control over one or more institutions participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 if the Secretary determines that the entity directly or indirectly holds a substantial ownership interest in the institution.

(3) For purposes of this subsection, an ownership interest is defined as a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation. An ownership interest may include, but is not limited to—

(A) a sole proprietorship;

(B) an interest as a tenant-in-common, joint tenant, or tenant by the entirety;

(C) a partnership; or

(D) an interest in a trust.

(4) The Secretary shall not impose the requirements described in subparagraphs (A) and (B) of paragraph (1) on an institution that—

(A) has not been subjected to a limitation, suspension, or termination action by the Secretary or a guaranty agency within the preceding 5 years;

(B) has not had, during its 2 most recent audits of the institutions conduct of programs under this subchapter and part C of subchapter I of chapter 34 of title 42, an audit finding that

resulted in the institution being required to repay an amount greater than 5 percent of the funds the institution received from programs under this subchapter and part C of subchapter I of chapter 34 of title 42 for any year;

(C) meets and has met, for the preceding 5 years, the financial responsibility standards under subsection (c) of this section; and

(D) has not been cited during the preceding 5 years for failure to submit audits required under this subchapter and part C of subchapter I of chapter 34 of title 42 in a timely fashion.

(5) For purposes of section 1094(c)(1)(G) of this title, this section shall also apply to individuals or organizations that contract with an institution to administer any aspect of an institution's student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42.

(6) Notwithstanding any other provision of law, any individual who—

(A) the Secretary determines, in accordance with paragraph (2), exercises substantial control over an institution participating in, or seeking to participate in, a program under this subchapter and part C of subchapter I of chapter 34 of title 42;

(B) is required to pay, on behalf of a student or borrower, a refund of unearned institutional charges to a lender, or to the Secretary; and

(C) willfully fails to pay such refund or willfully attempts in any manner to evade payment of such refund,

shall, in addition to other penalties provided by law, be liable to the Secretary for the amount of the refund not paid, to the same extent with respect to such refund that such an individual would be liable as a responsible person for a penalty under section 6672(a) of title 26 with respect to the nonpayment of taxes.

#### **(f) Actions on applications and site visits**

The Secretary shall ensure that prompt action is taken by the Department on any application required under subsection (b) of this section. The personnel of the Department of Education may conduct a site visit at each institution before certifying or recertifying its eligibility for purposes of any program under this subchapter and part C of subchapter I of chapter 34 of title 42. The Secretary shall establish priorities by which institutions are to receive site visits, and shall, to the extent practicable, coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden.

#### **(g) Time limitations on, and renewal of, eligibility**

##### **(1) General rule**

After the expiration of the certification of any institution under the schedule prescribed under this section (as this section was in effect prior to October 7, 1998), or upon request for initial certification from an institution not previously certified, the Secretary may certify the eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42

of each such institution for a period not to exceed 6 years.

**(2) Notification**

The Secretary shall notify each institution of higher education not later than 6 months prior to the date of the expiration of the institution's certification.

**(3) Institutions outside the United States**

The Secretary shall promulgate regulations regarding the recertification requirements applicable to an institution of higher education outside of the United States that meets the requirements of section 1002(a)(1)(C) of this title and received less than \$500,000 in funds under part B of this subchapter for the most recent year for which data are available.

**(h) Provisional certification of institutional eligibility**

(1) Notwithstanding subsections (d) and (g) of this section, the Secretary may provisionally certify an institution's eligibility to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42—

(A) for not more than one complete award year in the case of an institution of higher education seeking an initial certification; and

(B) for not more than 3 complete award years if—

(i) the institution's administrative capability and financial responsibility is being determined for the first time;

(ii) there is a complete or partial change of ownership, as defined under subsection (i) of this section, of an eligible institution; or

(iii) the Secretary determines that an institution that seeks to renew its certification is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities under a program participation agreement.

(2) Whenever the Secretary withdraws the recognition of any accrediting agency, an institution of higher education which meets the requirements of accreditation, eligibility, and certification on the day prior to such withdrawal, the Secretary may, notwithstanding the withdrawal, continue the eligibility of the institution of higher education to participate in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42 for a period not to exceed 18 months from the date of the withdrawal of recognition.

(3) If, prior to the end of a period of provisional certification under this subsection, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may terminate the institution's participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42.

**(i) Treatment of changes of ownership**

(1) An eligible institution of higher education that has had a change in ownership resulting in a change of control shall not qualify to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 after the change in control (except as provided in

paragraph (3)) unless it establishes that it meets the requirements of section 1002 of this title (other than the requirements in subsections (b)(5) and (c)(3)<sup>1</sup>) and this section after such change in control.

(2) An action resulting in a change in control may include (but is not limited to)—

(A) the sale of the institution or the majority of its assets;

(B) the transfer of the controlling interest of stock of the institution or its parent corporation;

(C) the merger of two or more eligible institutions;

(D) the division of one or more institutions into two or more institutions;

(E) the transfer of the controlling interest of stock of the institutions to its parent corporation; or

(F) the transfer of the liabilities of the institution to its parent corporation.

(3) An action that may be treated as not resulting in a change in control includes (but is not limited to)—

(A) the sale or transfer, upon the death of an owner of an institution, of the ownership interest of the deceased in that institution to a family member or to a person holding an ownership interest in that institution; or

(B) another action determined by the Secretary to be a routine business practice.

(4)(A) The Secretary may provisionally certify an institution seeking approval of a change in ownership based on the preliminary review by the Secretary of a materially complete application that is received by the Secretary within 10 business days of the transaction for which the approval is sought.

(B) A provisional certification under this paragraph shall expire not later than the end of the month following the month in which the transaction occurred, except that if the Secretary has not issued a decision on the application for the change of ownership within that period, the Secretary may continue such provisional certification on a month-to-month basis until such decision has been issued.

**(j) Treatment of branches**

(1) A branch of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, shall be certified under this subpart before it may participate as part of such institution in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, except that such branch shall not be required to meet the requirements of sections 1002(b)(1)(E) and 1002(c)(1)(C) of this title prior to seeking such certification. Such branch is required to be in existence at least 2 years after the branch is certified by the Secretary as a branch campus participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, prior to seeking certification as a main campus or free-standing institution.

(2) The Secretary may waive the requirement of section 1001(a)(2) of this title for a branch

<sup>1</sup> See References in Text note below.

that (A) is not located in a State, (B) is affiliated with an eligible institution, and (C) was participating in one or more programs under this subchapter and part C of subchapter I of chapter 34 of title 42 on or before January 1, 1992.

**(k) Treatment of teach-outs at additional locations**

**(1) In general**

A location of a closed institution of higher education shall be eligible as an additional location of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, for the purposes of a teach-out described in section 1094(f) of this title, if such teach-out has been approved by the institution's accrediting agency.

**(2) Special rule**

An institution of higher education that conducts a teach-out through the establishment of an additional location described in paragraph (1) shall be permitted to establish a permanent additional location at a closed institution and shall not be required—

(A) to meet the requirements of sections 1002(b)(1)(E) and 1002(c)(1)(C) of this title for such additional location; or

(B) to assume the liabilities of the closed institution.

(Pub. L. 89-329, title IV, § 498, as added Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 647; amended Pub. L. 103-208, § 2(i)(9)-(14), Dec. 20, 1993, 107 Stat. 2479, 2480; Pub. L. 105-244, title I, § 102(a)(6)(B), (b)(6), (7), title IV, § 493(a)-(c)(1), (d)-(h), Oct. 7, 1998, 112 Stat. 1618, 1622, 1761-1763; Pub. L. 110-315, title IV, § 496, Aug. 14, 2008, 122 Stat. 3327; Pub. L. 111-39, title IV, § 408(2), July 1, 2009, 123 Stat. 1953.)

REFERENCES IN TEXT

Subsections (b)(5) and (c)(3), referred to in subsec. (i)(1), originally meant subsections (b)(5) and (c)(3) of section 1088 of this title, see 1998 Amendment note below for subsec. (i)(1). Pub. L. 105-244, title I, § 101(c), Oct. 7, 1998, 112 Stat. 1617, amended section 1088 by striking out subsections (b) and (c) and redesignating subsections (e) and (f) as (b) and (c), respectively. Section 1002 of this title does not contain a subsec. (b)(5) or (c)(3), but provisions similar to those appearing in former subsections (b)(5) and (c)(3) of section 1088 are contained in subsections (b)(1)(E) and (c)(1)(C) of section 1002.

AMENDMENTS

2009—Subsec. (c)(2). Pub. L. 111-39 substituted “for-profit” for “for profit”.

2008—Subsec. (d)(1)(B). Pub. L. 110-315, § 496(1), inserted “and” after semicolon.

Subsec. (k). Pub. L. 110-315, § 496(2), added subsec. (k). 1998—Subsec. (b)(1). Pub. L. 105-244, § 493(a)(1), substituted “financial responsibility, and administrative capability” for “and capability”.

Subsec. (b)(3). Pub. L. 105-244, § 493(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “requires a description of third party servicers of an institution of higher education, together with a copy of any contract with the institution of higher education and a financial aid service provider or loan servicer; and”.

Subsec. (b)(5). Pub. L. 105-244, § 493(a)(3), (4), added par. (5).

Subsec. (c)(2). Pub. L. 105-244, § 493(b)(1)(B), inserted “, public,” after “for profit” in second sentence.

Pub. L. 105-244, § 493(b)(1)(A), which directed amendment of first sentence by substituting “regarding ratios that demonstrate financial responsibility,” for “with respect to operating losses, net worth, asset-to-liabilities ratios, or operating fund deficits”, was executed by making the substitution for text which read “asset-to-liabilities ratios” rather than “asset to liabilities ratios”, to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 105-244, § 493(b)(2), inserted “that the Secretary determines are reasonable” after “Secretary third-party financial guarantees”.

Subsec. (c)(4). Pub. L. 105-244, § 493(b)(3)(A), substituted “criteria” for “ratio of current assets to current liabilities” in introductory provisions.

Subsec. (c)(4)(C). Pub. L. 105-244, § 493(b)(3)(B), substituted “criteria” for “current operating ratio requirement”.

Subsec. (e)(6). Pub. L. 105-244, § 493(c)(1), added par. (6).

Subsec. (f). Pub. L. 105-244, § 493(d), substituted “and site visits” for “; site visits and fees” in heading, “may” for “shall” in second sentence, and “shall establish” for “may establish” and “shall, to the extent practicable, coordinate” for “may coordinate” in third sentence, and struck out at end “The Secretary may charge reasonable fees to cover the expenses of certification and site visits and, to the extent permitted by appropriations Acts, may retain such fees to cover such expenses.”

Subsec. (g). Pub. L. 105-244, § 493(e), amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows:

“(1) The eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 of any institution that is participating in any such program on July 23, 1992, shall expire in accordance with the schedule prescribed by the Secretary in accordance with paragraph (2), but not later than 5 years after July 23, 1992.

“(2) The Secretary shall establish a schedule for the expiration of the eligibility for purposes of any such program of all institutions of higher education within the 5-year period specified in paragraph (1). Such schedule shall place a priority for the expiration of the certification of institutions on those that meet the following criteria:

“(A) institutions subject to review by a State post-secondary review entity pursuant to subpart 1 of this part; or

“(B) other categories of institutions which the Secretary deems necessary.

“(3) After the expiration of the certification of any institution under the schedule prescribed under this subsection, or upon request for initial certification from an institution not previously certified, the Secretary may certify the eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 of each such institution for a period not to exceed 4 years.”

Subsec. (h)(2). Pub. L. 105-244, § 493(f), substituted “the recognition” for “the approval” and “of recognition” for “of approval”.

Subsec. (i)(1). Pub. L. 105-244, § 102(b)(6), substituted “section 1002” for “section 1088”.

Subsec. (i)(4). Pub. L. 105-244, § 493(g), added par. (4).

Subsec. (j)(1). Pub. L. 105-244, § 493(h), inserted “after the branch is certified by the Secretary as a branch campus participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42,” after “2 years”.

Pub. L. 105-244, § 102(b)(7)(A), substituted “sections 1002(b)(1)(E) and 1002(c)(1)(C)” for “sections 1088(b)(5) and 1088(c)(3)”.

Subsec. (j)(2). Pub. L. 105-244, § 102(a)(6)(B), (b)(7)(B), amended par. (2) identically, substituting “section 1001(a)(2)” for “section 1141(a)(2)”.

1993—Subsec. (c)(2). Pub. L. 103-208, § 2(i)(9)(A), inserted at end “Such criteria shall take into account any differences in generally accepted accounting prin-

ciples, and the financial statements required thereunder, that are applicable to for profit and nonprofit institutions. The Secretary shall take into account an institution's total financial circumstances in making a determination of its ability to meet the standards herein required."

Subsec. (c)(3). Pub. L. 103–208, §2(i)(9)(B), substituted "The Secretary shall determine" for "The Secretary may determine" in introductory provisions.

Subsec. (c)(3)(C). Pub. L. 103–208, §2(i)(9)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "such institution establishes to the satisfaction of the Secretary, with the support of a report of an independent certified public accountant prepared under generally accepted accounting principles, that the institution is a going concern capable of meeting all of its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary; or".

Subsec. (c)(4) to (6). Pub. L. 103–208, §2(i)(9)(D), (E), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 103–208, §2(i)(10), inserted after second sentence "The Secretary may establish priorities by which institutions are to receive site visits, and may coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden."

Subsec. (h)(1)(B)(iii). Pub. L. 103–208, §2(i)(11), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "the Secretary determines that the institution is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its responsibilities under its program participation agreement."

Subsec. (i)(1). Pub. L. 103–208, §2(i)(12), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For the purpose of certifying the eligibility of an institution, an eligible institution of higher education that has a change in ownership resulting in a change in control shall not be considered to be the same institution (except as provided in paragraph (3)) and shall be considered a new institution for the purpose of establishing eligibility, except that such institution shall not be required (under section 1088(b)(5) or 1088(c)(3) of this title) to be in existence for 2 years prior to seeking such certification unless such institution was in existence as a branch for less than 2 years."

Subsec. (i)(3)(A). Pub. L. 103–208, §2(i)(13), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the death of an owner of an institution, when the owner's interest is sold or transferred to either a family member or a current stockholder of the corporation; or".

Subsec. (j)(1). Pub. L. 103–208, §2(i)(14), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For the purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, a branch of an eligible institution, as defined pursuant to regulations of the Secretary, is a separate institution of higher education and shall separately meet all the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42, except that such institution shall not be required (under section 1088(b)(5) or 1088(c)(3) of this title) to be in existence for 2 years prior to seeking such certification unless such institution was in existence as a branch for less than 2 years."

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by sections 102(a)(6)(B), (b)(6), (7) and 493(a), (b), (d)–(h) of Pub. L. 105–244 effective Oct. 1, 1998,

except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, §493(c)(2), Oct. 7, 1998, 112 Stat. 1762, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any unpaid refunds that were first required to be paid to a lender or to the Secretary on or after 90 days after the date of enactment of this Act [Oct. 7, 1998]."

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE

Subpart effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

### § 1099c–1. Program review and data

#### (a) General authority

In order to strengthen the administrative capability and financial responsibility provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary—

(1) shall provide for the conduct of program reviews on a systematic basis designed to include all institutions of higher education participating in programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42;

(2) shall give priority for program review to institutions of higher education that are—

(A) institutions with a cohort default rate for loans under part B of this subchapter in excess of 25 percent or which places such institutions in the highest 25 percent of such institutions;

(B) institutions with a default rate in dollar volume for loans under part B of this subchapter which places the institutions in the highest 25 percent of such institutions;

(C) institutions with a significant fluctuation in Federal Stafford Loan volume, Federal Direct Stafford/Ford Loan volume, or Federal Pell Grant award volume, or any combination thereof, in the year for which the determination is made, compared to the year prior to such year, that are not accounted for by changes in the Federal Stafford Loan program, the Federal Direct Stafford/Ford Loan program, or the Pell Grant program, or any combination thereof;

(D) institutions reported to have deficiencies or financial aid problems by the State licensing or authorizing agency, or by the appropriate accrediting agency or association;

(E) institutions with high annual dropout rates; and

(F) such other institutions that the Secretary determines may pose a significant risk of failure to comply with the administrative capability or financial responsibility provisions of this subchapter and part C of subchapter I of chapter 34 of title 42; and

(3) shall establish and operate a central data base of information on institutional accredita-

tion, eligibility, and certification that includes—

- (A) all relevant information available to the Department;
- (B) all relevant information made available by the Secretary of Veterans Affairs;
- (C) all relevant information from accrediting agencies or associations;
- (D) all relevant information available from a guaranty agency; and
- (E) all relevant information available from States under subpart 1 of this part.

**(b) Special administrative rules**

In carrying out paragraphs (1) and (2) of subsection (a) of this section and any other relevant provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall—

- (1) establish guidelines designed to ensure uniformity of practice in the conduct of program reviews of institutions of higher education;
- (2) make available to each institution participating in programs authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 complete copies of all review guidelines and procedures used in program reviews;
- (3) permit the institution to correct or cure an administrative, accounting, or record-keeping error if the error is not part of a pattern of error and there is no evidence of fraud or misconduct related to the error;
- (4) base any civil penalty assessed against an institution of higher education resulting from a program review or audit on the gravity of the violation, failure, or misrepresentation;
- (5) inform the appropriate State and accrediting agency or association whenever the Secretary takes action against an institution of higher education under this section, section 1099c of this title, or section 1082 of this title;
- (6) provide to an institution of higher education an adequate opportunity to review and respond to any program review report and relevant materials related to the report before any final program review report is issued;
- (7) review and take into consideration an institution of higher education's response in any final program review report or audit determination, and include in the report or determination—
  - (A) a written statement addressing the institution of higher education's response;
  - (B) a written statement of the basis for such report or determination; and
  - (C) a copy of the institution's response; and
- (8) maintain and preserve at all times the confidentiality of any program review report until the requirements of paragraphs (6) and (7) are met, and until a final program review is issued, other than to the extent required to comply with paragraph (5), except that the Secretary shall promptly disclose any and all program review reports to the institution of higher education under review.

- (A) a written statement addressing the institution of higher education's response;
- (B) a written statement of the basis for such report or determination; and
- (C) a copy of the institution's response; and

- (8) maintain and preserve at all times the confidentiality of any program review report until the requirements of paragraphs (6) and (7) are met, and until a final program review is issued, other than to the extent required to comply with paragraph (5), except that the Secretary shall promptly disclose any and all program review reports to the institution of higher education under review.

**(c) Data collection rules**

The Secretary shall develop and carry out a plan for the data collection responsibilities de-

scribed in paragraph (3) of subsection (a) of this section. The Secretary shall make the information obtained under such paragraph (3) readily available to all institutions of higher education, guaranty agencies, States, and other organizations participating in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42.

**(d) Training**

The Secretary shall provide training to personnel of the Department, including criminal investigative training, designed to improve the quality of financial and compliance audits and program reviews conducted under this subchapter and part C of subchapter I of chapter 34 of title 42.

**(e) Special rule**

The provisions of section 3403(b) of this title shall not apply to Secretarial determinations made regarding the appropriate length of instruction for programs measured in clock hours.

(Pub. L. 89-329, title IV, § 498A, as added Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 652; amended Pub. L. 103-208, § 2(i)(15), Dec. 20, 1993, 107 Stat. 2480; Pub. L. 105-244, title IV, § 494, Oct. 7, 1998, 112 Stat. 1763; Pub. L. 110-315, title IV, § 497, Aug. 14, 2008, 122 Stat. 3328.)

AMENDMENTS

2008—Subsec. (b)(6) to (8). Pub. L. 110-315 added pars. (6) to (8).

1998—Subsec. (a)(2). Pub. L. 105-244, § 494(1)(A)(i), substituted “shall” for “may” in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 105-244, § 494(1)(A)(ii), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “institutions with a significant fluctuation in Federal Stafford Loan volume or Federal Pell Grant awards, or both, in the year for which the determination is made compared to the year prior to such year;”.

Subsec. (a)(2)(D). Pub. L. 105-244, § 494(1)(A)(iii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “institutions reported to have deficiencies or financial aid problems by the appropriate State postsecondary review entity designated under subpart 1 of this part or by the appropriate accrediting agency or association;”.

Subsec. (a)(2)(E). Pub. L. 105-244, § 494(1)(A)(iv), inserted “and” after the semicolon.

Subsec. (a)(2)(F), (G). Pub. L. 105-244, § 494(1)(A)(v), added subpar. (F) and struck out former subpars. (F) and (G) which read as follows:

“(F) any institution which is required to be reviewed by a State postsecondary review entity pursuant to subpart 1 of this part under section 1099a-3(b) of this title; and

“(G) such other institutions as the Secretary deems necessary; and”.

Subsec. (a)(3)(A). Pub. L. 105-244, § 494(1)(B), inserted “relevant” after “all”.

Subsec. (b). Pub. L. 105-244, § 494(2), amended heading and text of subsec. (b). Prior to amendment, text read as follows:

“(1) In carrying out paragraphs (1) and (2) of subsection (a) of this section, the Secretary shall establish guidelines designed to ensure uniformity of practice in the conduct of program reviews of institutions of higher education.

“(2) The Secretary shall review the regulations of the Department and the application of such regulations to ensure the uniformity of interpretation and application of the regulations.”

1993—Subsec. (e). Pub. L. 103-208 struck out comma after “title”.

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

**§ 1099c-2. Review of regulations****(a) Review required**

The Secretary shall review each regulation issued under this subchapter and part C of subchapter I of chapter 34 of title 42 that is in effect at the time of the review and applies to the operations or activities of any participant in the programs assisted under this subchapter and part C of subchapter I of chapter 34 of title 42. The review shall include a determination of whether the regulation is duplicative, or is no longer necessary. The review may involve one or more of the following:

- (1) An assurance of the uniformity of interpretation and application of such regulations.
- (2) The establishment of a process for ensuring that eligibility and compliance issues, such as institutional audit, program review, and recertification, are considered simultaneously.
- (3) A determination of the extent to which unnecessary costs are imposed on institutions of higher education as a consequence of the applicability to the facilities and equipment of such institutions of regulations prescribed for purposes of regulating industrial and commercial enterprises.

**(b) Regulatory and statutory relief for small volume institutions**

The Secretary shall review and evaluate ways in which regulations under and provisions of this chapter and part C of subchapter I of chapter 34 of title 42 affecting institution of higher education (other than institutions described in section 1002(a)(1)(C) of this title), that have received in each of the two most recent award years prior to October 7, 1998, less than \$200,000 in funds through this subchapter and part C of subchapter I of chapter 34 of title 42, may be improved, streamlined, or eliminated.

**(c) Consultation**

In carrying out subsections (a) and (b) of this section, the Secretary shall consult with relevant representatives of institutions participating in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42.

(Pub. L. 89-329, title IV, § 498B, as added Pub. L. 105-244, title IV, § 495, Oct. 7, 1998, 112 Stat. 1764; amended Pub. L. 110-315, title IV, § 498, Aug. 14, 2008, 122 Stat. 3328.)

## AMENDMENTS

2008—Subsec. (d). Pub. L. 110-315 struck out subsec. (d) which required the Secretary to submit reports to Congress.

## EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

**PART H—COMPETITIVE LOAN AUCTION PILOT PROGRAM**

## CODIFICATION

This part was added as part I of title IV of Pub. L. 89-329 by Pub. L. 110-84, title VII, § 701, Sept. 27, 2007, 121 Stat. 808. The letter designation of this part was changed from “I” to “H” for codification purposes. See Codification note preceding section 1087a of this title.

**§ 1099d. Competitive loan auction pilot program****(a) Definitions**

In this section:

**(1) Eligible Federal PLUS Loan**

The term “eligible Federal PLUS Loan” means a loan described in section 1078-2 of this title made to a parent of a dependent student who is a new borrower on or after July 1, 2009.

**(2) Eligible lender**

The term “eligible lender” has the meaning given the term in section 1085 of this title.

**(b) Pilot program**

The Secretary shall carry out a pilot program under which the Secretary establishes a mechanism for an auction of eligible Federal PLUS Loans in accordance with this subsection. The pilot program shall meet the following requirements:

**(1) Planning and implementation**

During the period beginning on September 27, 2007, and ending on June 30, 2009, the Secretary shall plan and implement the pilot program under this subsection. During the planning and implementation, the Secretary shall consult with other Federal agencies with knowledge of, and experience with, auction programs, including the Federal Communication Commission and the Department of the Treasury.

**(2) Origination and disbursement; applicability of section 1078-2**

Beginning on July 1, 2009, the Secretary shall arrange for the origination and disbursement of all eligible Federal PLUS Loans in accordance with the provisions of this subsection and the provisions of section 1078-2 of this title that are not inconsistent with this subsection.

**(3) Loan origination mechanism**

The Secretary shall establish a loan origination auction mechanism that meets the following requirements:

**(A) Auction for each State**

The Secretary administers an auction under this paragraph for each State, under which eligible lenders compete to originate eligible Federal PLUS Loans under this paragraph at all institutions of higher education within such State.

**(B) Prequalification process**

The Secretary establishes a prequalification process for eligible lenders